

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 7100 of 1998

For Approval and Signature:

Hon'ble MR.JUSTICE D.C.SRIVASTAVA Sd/-

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?
Nos. 1 to 5 No

RAJNIKANT V BUHA

Versus

STATE OF GUJARAT

Appearance:

M/S THAKKAR ASSOC. for Petitioner
MR.C.C.BHALJA, ASSISTANT GOVERNMENT PLEADER
for Respondent No. 1
MR BHARAT T RAO for Respondent No. 4

CORAM : MR.JUSTICE D.C.SRIVASTAVA

Date of decision: 05/02/99

ORAL JUDGEMENT

The petitioner in this writ petition under Article 226 of the Constitution of India has through a writ of certiorari challenged the detention order dated 6.8.1998 passed by the District Magistrate, Junagadh under section 3(2) of the Prevention of Black Marketing

and Maintenance of Supplies of Essential Commodities Act, 1980 with further prayer through a writ of habeas corpus that the petitioner be released immediately from illegal detention.

From the grounds of detention it appears that certain irregularities were found on the part of the petitioner by the supply department. Those irregularities are mainly three fold. The first is that certain false forged bills bearing forged seals of Mamlatdar were used by the petitioner for transporting outside Gujarat the groundnut and groundnut oil, and second irregularity is that the groundnut oil and the groundnut which is essential commodity under the different Control orders was being transported outside the State without permission of the concerned authority viz. the Collector etc. The third irregularity was certain quantity of groundnut oil was transported outside the State without proper account. The previous activities of the petitioner in relation to another concern of the petitioner viz. Akshar Corporation were also considered and after considering the black marketing activity of the petitioner the impugned order was passed. It was observed in the impugned order that by indulging in such activity the petitioner has earned huge amount of illegal profit.

This order has been challenged in this writ petition only on three grounds.

The first ground is that the Detaining Authority has not considered the alternative efficacious remedies available against the petitioner and without considering the lesser drastic remedies the Detaining Authority was not justified in passing the impugned order of detention. Special reference was made to the grounds of detention. From page 14 of the translation of grounds of detention it appears that the Detaining Authority considered only one alternative remedy viz. prosecution of the petitioner under the Essential Commodities Act viz. section 7 and action under section 12AA of the Essential Commodities Act. Other remedies were not considered in the grounds of detention. The learned Assistant Government Pleader has contended that other remedies were considered and because the petitioner was repeatedly committing the offence of black marketing even on previous occasion his licence was cancelled for which reference has been made to page 13 of the english translation of the grounds of detention. He, however, could not satisfy that any action was taken against the petitioner with regard to these black marketing

activities in connection with the business run by him in another name viz. Gita Industries, Bilkha. If a person is engaged in 3 or 4 concerns and licence of one of the concerns is cancelled earlier it does not necessarily mean or remotely mean that the Detaining Authority has considered that suspension or cancellation of licence of Gita Industries, Bilkha would not have prevented the petitioner effectively from repeating his black marketing activities in relation to this concern. What is mentioned at page 14 of the translated copy of the grounds of detention is that though appropriate actions were taken against him in past such activities of his unlawful business is not stopped. It is not mentioned in the grounds of detention what actions were taken against the petitioner in past in respect to his activities of Gita Industries, Bilkha. After reading the grounds of detention it can safely be said that the Detaining Authority did not consider that suspension or cancellation of licence of the petitioner in the name of Gita Industries, Bilkha could not have been effective remedy for preventing the petitioner's illegal black marketing activities. The learned Assistant Government Pleader argued that existence of alternative remedy is no bar for passing the detention order. In the same breath he argued that the Detaining Authority is bound to consider alternative remedies. It is therefore, manifest that the learned Assistant Government Pleader himself admits that if there are alternative remedies available to the Detaining Authority he should have considered the same. If more than one remedy is available then the Detaining Authority is bound to consider all the alternative remedies and his responsibility is not discharged simply by considering only one alternative remedy as has been done in this case viz. alternative remedy of prosecution of the petitioner under section 7 etc. of the Essential Commodities Act only was considered. The learned Counsel for the petitioner has placed reliance upon the judgment of this Court in Special Civil Application No.6408 of 1998. In this judgment, two Division Bench pronouncements of this Court were taken into consideration and thereafter it was observed that it is obligatory for the Detaining Authority to consider the alternative efficacious remedies. If such consideration was made by the Detaining Authority this Court in exercise of its jurisdiction under Article 226 of the Constitution of India will not sit in appeal over the observations of the Detaining Authority nor it will substitute its own views that consideration of alternative efficacious remedies by the Detaining Authority was not proper. The only requirement is that the Detaining Authority should be

conscious of alternative remedies which can be availed of against the petitioner and there should be some indication in the grounds of detention that those alternative remedies were taken note of and considered by the Detaining Authority. As mentioned earlier, if more than one remedies are available to the Detaining Authority he has to consider and discuss all those remedies and if upon such consideration he finds that the alternative remedies are not efficacious, seeing the nature of antisocial black marketing activities of the petitioner, with a view to immediately prevent the repetition of such nefarious activities and preventive detention is the only remedy he is justified in passing the detention order.

In the instant case on the other hand, the Detaining Authority was satisfied only with the consideration of one of the alternative remedies viz. prosecution of the petitioner under Essential Commodities Act. Since he did not consider the other alternative remedies viz. suspension of licence or cancellation of licence of Gita Industries, Bilkha the impugned order is rendered illegal and on this count the impugned order can be quashed.

The second ground has been that there was delay on the part of the Central Government in considering the representation of the petitioner. This ground has no merit at all. The affidavit of SHri Jatinderbir Singh, Director in the Department of Consumer Affairs, Ministry of Food and Consumer Affairs, New Delhi, explains the reasons for delay and the said explanation is found to be satisfactory. Admittedly, the representation dated 26.8.1998 was sent by the Advocate of the detenu. This counter affidavit shows that this representation was received in the concerned section on 1.9.1998. The representation is to be dealt with by the concerned section and the concerned section is not expected to explain in what manner and where the representation was received earlier. The learned Counsel for the petitioner contended that the representation was received on 27.8.1998 but it is also clear that the said representation was not received in the section on 27.8.1998. Naturally some time must have been taken in reaching the representation on the table of the concerned section. Thus, delay between 27th and 29th August, 1998 stands automatically explained. After receiving the representation on 1.9.1998, a telegram was sent by the concerned section to the State Government calling for parawise comments on the representation. Another representation was also received by the Central

Government duly forwarded by the State Government on 11.9.1998. Parawise comments on this representation were received from the State Government on 21.9.1998. In these days when postal inefficiency is at its lowest-ebb it cannot be said that there was undue delay in receiving the telegram calling for parawise comments and sending the same to the Central Government. The Central Government received parawise comments on 21.9.1998 and rejected the representation on 22.9.1998. On these facts, it cannot be said that there was delay or inordinate delay in disposal of representation by the Central Government. Movement of the representation has been explained in detail. Hence, on this ground the impugned order cannot be quashed.

The last ground has been that there is four days delay on the part of the Detaining Authority in forwarding the representation dated 26.8.1998 to the State Government. The learned Assistant Government Pleader has tried to explain this delay but he miserably failed to explain the same from the counter affidavit of the Detaining Authority. The learned Assistant Government Pleader contended that because the address of the Advocate who sent the representation, so also the address of the detenu was not given on the representation, hence this four days delay occurred. No reasonable man will be impressed by this contention because the Detaining Authority was not expected to forward the representation either to the detenu or to the Advocate of the detenu. Consequently, address of the detenu or his Advocate was altogether irrelevant information and on this irrelevant ground it cannot be said that the delay of four days is explained. There is no explanation what to say of satisfactory explanation of four days delay in forwarding the representation by the Detaining Authority to the State Government and this delay is also fatal on account of which the impugned order of detention cannot be sustained.

In view of the above discussions, for two reasons as stated in foregoing portion of this judgment the impugned order cannot be sustained. The writ petition therefore succeeds and is hereby allowed. The impugned order of detention dated 6.8.1998 is hereby quashed. The petitioner shall be released forthwith unless wanted in some other case.

Sd/-

(D.C.Srivastava, J)

m.m.bhatt